

Xavier demetri nailning

FULL NAME

COMMITTED NAME (if different)

P.O. Box 904

FULL ADDRESS INCLUDING NAME OF INSTITUTION

AVENAL CA. 93204

Avenal State Prison

PRISON NUMBER (if applicable)

FILED CLERK, U.S. DISTRICT COURT
MAY 22 2018
CENTRAL DISTRICT OF CALIFORNIA BY <i>[Signature]</i> DEPUTY

RELATE O DDJ

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

Xavier D. Nailning

PLAINTIFF,

v.  
JACKIE LACEY, EVELIS DEGARMO,  
BROCK LUNSFORD

DEFENDANT(S).

CASE NUMBER

LA18CV04327-AG(JC)

*To be supplied by the Clerk*

CIVIL RIGHTS COMPLAINT

PURSUANT TO (Check one)

42 U.S.C. § 1983

Bivens v. Six Unknown Agents 403 U.S. 388 (1971)

A. PREVIOUS LAWSUITS

1. Have you brought any other lawsuits in a federal court while a prisoner:  Yes  No
2. If your answer to "1." is yes, how many? Two

RECEIVED CLERK, U.S. DISTRICT COURT
MAY 21 2018
CENTRAL DISTRICT OF CALIFORNIA BY <i>[Signature]</i> DEPUTY

Describe the lawsuit in the space below. (If there is more than one lawsuit, describe the additional lawsuits on an attached piece of paper using the same outline.) *FEDERAL CIVIL CASE: 1:18-CV-00230-DAD-BAM*

1. *Is a Property related Due Process and Equal Protection Claim. As well as Disciplinary Proceeding Due Process and Equal Protection Claim. Defendant took evidence of Los Angeles County jail officials violations of inmate civil rights once Plaintiff in the above entitled case Filed a CCR 602 grievance's That as well as his Property grievance came up missing. Defendant then violated their own interdepartmental Policy of the Mental Health Delivery SYSTEMS and a Federal Court Order Drived From. Coleman v. Brown Federal Case.*

2. *Federal Civil Case: 1:18-CV-00565-LJO-EPG is a Threat to Safety Eight Amendment Civil rights violation Claim. Defendants interviewed Plaintiff at his Classification Committee and agreed to Falsely brand the Plaintiff a sex offender. The Plaintiff's Correctional Case Counselor was charged with the duty of reviewing case files and records prior to an agreement of any and all case factor's specially any case factor's that would place the Plaintiff or the institution in DANGER. Defendant did in fact place a charge after the Case Factor: Sex that was dismissed and the Charge was not even a CRIME of sex: Disorderly conduct.*

- a. Parties to this previous lawsuit:

Plaintiff Xavier Dmetri Nailring, Xavier Nailring

T.C

Defendants T.COTA, R.NDOH, K.BAY, R.TIMENEZ.

F.Feliciano, G.Baker, C.Wade, T.ACTIS, B.Keyfauver, Weston Phillips

- b. Court UNITED STATES Eastern district Fresno

- c. Docket or case number 1:18-CV-00565-LJO-EPG, 1:18-CV-00230-OAD-BAM

- d. Name of judge to whom case was assigned Lawrence O'Neill, Barbara A. McAuliffe

- e. Disposition (For example: Was the case dismissed? If so, what was the basis for dismissal? Was it appealed? Is it still pending?) Both still Pending

- f. Issues raised: Threat to Safety, Property and Disciplinary proceeding

- g. Approximate date of filing lawsuit: 2-15-2018 and 4-26-2018

- h. Approximate date of disposition unknown

## B. EXHAUSTION OF ADMINISTRATIVE REMEDIES

1. Is there a grievance procedure available at the institution where the events relating to your current complaint occurred?  Yes  No

2. Have you filed a grievance concerning the facts relating to your current complaint?  Yes  No

If your answer is no, explain why not \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. Is the grievance procedure completed?  Yes  No

If your answer is no, explain why not CACR has no jurisdiction  
\_\_\_\_\_  
\_\_\_\_\_

4. Please attach copies of papers related to the grievance procedure.

## C. JURISDICTION

This complaint alleges that the civil rights of plaintiff Xavier d. Nailring  
(print plaintiff's name)

who presently resides at AVENAL State Prison P.O. Box 904 Avenal CA. 93204  
(mailing address or place of confinement)

were violated by the actions of the defendant(s) named below, which actions were directed against plaintiff at

AVENAL State Prison  
(institution/city where violation occurred)

on (date or dates) 04-12-2018, (Claim I), (Claim II), (Claim III).

**NOTE:** You need not name more than one defendant or allege more than one claim. If you are naming more than five (5) defendants, make a copy of this page to provide the information for additional defendants.

1. Defendant JACKIE LACEY resides or works at  
(full name of first defendant)  
320 West Temple street Suite 540 Los Angeles, CA 90012  
(full address of first defendant)  
DISTRICT ATTORNEY OF LOS ANGELES  
(defendant's position and title, if any)

The defendant is sued in his/her (Check one or both):  individual  official capacity.

Explain how this defendant was acting under color of law:

JACKIE LACEY IS THE DISTRICT ATTORNEY OF THE COUNTY OF LOS ANGELES  
A COUNTY OFFICIAL. MONROE V. PAPER, 365 U.S. 167 (1961).

2. Defendant EVELIS M. DE GARMO resides or works at  
(full name of first defendant)  
320 West Temple street Suite 540 Los Angeles, CA. 90012  
(full address of first defendant)  
Habeas Corpus Litigation Team Deputy  
(defendant's position and title, if any)

The defendant is sued in his/her (Check one or both):  individual  official capacity.

Explain how this defendant was acting under color of law:

EVELIS M. DEGARMO IS A DEPUTY DISTRICT ATTORNEY FOR LOS ANGELES  
COUNTY AND IS AN OFFICIAL. MONROE V. PAPER, 365 U.S. 167 (1961).

3. Defendant BROCK LUNSFORD resides or works at  
(full name of first defendant)  
320 West Temple street Suite 540 Los Angeles, CA. 90012  
(full address of first defendant)  
Habeas Corpus Litigation Team Deputy ~~and Agent for Plaintiff DEGARMO~~  
(defendant's position and title, if any)

The defendant is sued in his/her (Check one or both):  individual  official capacity.

Explain how this defendant was acting under color of law:

BROCK LUNSFORD IS EMPLOYED BY THE DISTRICT ATTORNEY'S OFFICE OF  
LOS ANGELES COUNTY AND AN OFFICIAL. MONROE V. PAPER, 365 U.S. 167 (1961)

## D. CLAIMS\*

## CLAIM I

The following civil right has been violated:

14th Amendment Due Process Clause Defendants  
JACKIE LACEY, EVELIS M. DeGARMO, Brock Lunsford Filed a  
Subpoena Duces Tecum under the penalty of perjury while  
Simultaneously Filing a Request To Extension of 15-57  
days of time. The Defendants Subpoena Duces Tecum  
State "THAT THE ABOVE DOCUMENTS ARE MATERIAL TO  
THE ISSUES INVOLVED IN THE CASE BY REASON OF  
THE FOLLOWING FACTS: NEEDED TO DETERMINE  
IF THE DEFENDANT POSES AN UNREASONABLE  
RISK TO PUBLIC SAFETY PURSUANT TO A REMITTENARY  
PROVIDED BY PENAL CODE SECTION 1170.126"  
DEFENDANT'S Should Have Known That The Plaintiff  
had File a Petition for Writ of Habeas Corpus under  
and or P.C § 2900.5, subdivision (a) Not Proposition 36, Causing  
The Plaintiff to be over-detained & FALSELY imprisoned as of 04-21-2018  

Supporting Facts: Include all facts you consider important. State the facts clearly, in your own words, and without citing legal authority or argument. Be certain you describe, in separately numbered paragraphs, exactly what each DEFENDANT (by name) did to violate your right.

ON 02/13/2018 Plaintiff sent his Petition to the court in Los Angeles  
it was filed on 02/22/2018. ON 04/05/2018 the Court, Nonc party  
deponent and witness William C. RYAN order The Defendant  
To file a informal Response Exhibit A. ON 04/12/2018 The  
Defendant file A Subpoena Duces Tecum under the penalty of  
Perjury and a Request To ~~extention~~ extend time until 06-15-2018.  
Exhibit B. ON 04/17/2018 Non-party deponent and witness  
William C. RYAN order The Defendant extention.  
The false Documents that were file are a clear violation  
of the LAW That violation caused the Plaintiff  
to be over Detained The courts was unaware that  
The Defendants Subpoena Duces Tecum was Fraudulent  
AS ~~they~~ the defendant file there request for an extention  
and ask for some of the same Document most of

\*If there is more than one claim, describe the additional claim(s) on another attached piece of paper using the same outline.

1 which do not exist. UPON information and belief filed there  
 2 57 day extension so to render the Defendant/Plaintiffs  
 3 Petition Moot Because Plaintiffs Current release from  
 4 CDCR is 07-22-2018 Exhibit C. UPON INFORMATION AND  
 5 BELIEF Defendant JACKIE LACEY may have instructed, or  
 6 directed Defendants BROCK LUNSFORD and EVELIS DeGARMO  
 7 TO FALSELY FILE the Subpoena DUCES TECUM Due to the  
 8 FACT that the Plaintiff sent the Defendant JACKIE  
 9 LACEY a letter Certified mail in 2013 or 2014 Stating that  
 10 he is a witness in a Case her the Defendants Office  
 11 was Prosecuting and that Plaintiff had knowledge that  
 12 Sheriff department's were directly involved in an Assault and  
 13 Sexual Battery, this was at the time that Paul Tanaka  
 14 Now a Convicted Federal Prisoner was running the  
 15 Los Angeles County Jail. Defendant JACKIE LACEY  
 16 was made Fully Aware by the Plaintiff of the Sheriffs  
 17 departments involvement in that inhouse Crime.

18 ON MAY 1, 2018 Non-Party Deponent and witness William C.  
 19 RYAN DENIED Plaintiffs Objections to the Defendants extension  
 20 of time and Plaintiffs Notice Motion in amicus Curiae. Exhibit  
 21 C. Defendant is The District Attorney and is The County  
 22 prosecutor of Los Angeles Defendants should have known  
 23 that After Plaintiff WAS Prosecuted that on 11-17-2016  
 24 in Dept 115 Plaintiff at that time a Defendant in Case  
 25 BA441591 he WAS Placed on Formal Probation and give a  
 26 Total of 261 days of custody Credit. ON 07-10-2017 Plaintiff  
 27 Plaintiff WAS only given 226 days of credit when he was  
 28 Sent to Prison after spending and additional 64 days in

1 LA County Jail from 05/08/2017 until his sentencing  
2 on 07-10-2017 is a total of 64 days, 64 days added  
3 to his Presentencing Credits on 11-17-2016 of 261 is  
4 325 Plaintiff/The defendant at that time should have been  
5 given. 325 minus the 226 credit Plaintiff was given  
6 is 122 days minus 17 days of Post sentencing  
7 credits is 95 days Plaintiff is owed. Plaintiff's  
8 release date was and is 7-22-2018 at the time the  
9 Defendant informal response ~~was~~ WAS Due 04-20-2018  
10 as of 04-24-2018 Plaintiff became over-incarcerated.  
11 Directly cause by Defendant filing false documents  
12 as of the date of this Civil Rights Complaint the  
13 Plaintiff will be falsely imprisoned for 22 days.  
14 by the end of the current order Plaintiff will be  
15 over ~~detain~~ detained and falsely imprisoned for 52  
16 days. The Defendant Should have known that by  
17 there action Plaintiff would sustain a Fourteenth  
18 Amendment Due Process Violation.

19

20

21

22

23

24

25

26

27

28

E. REQUEST FOR RELIEF

I believe that I am entitled to the following specific relief:

(1) That this Court enter judgment granting Plaintiff a declaration that the acts and omissions herein that are described violate the Plaintiff's rights under the United States Constitution. (2) Compensatory damages in the amount of \$310.00 per day of over-incarceration. (3) That this case be referred to ADR program.

05/16/2018  
(Date)

Xan Hau  
(Signature of Plaintiff)

(8)

Exhibit A

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES**  
**DEPT 100**

Date:	April 04, 2018	Judge	S. KADOHATA	Deputy Clerk
Honorable:	WILLIAM C. RYAN NONE	Bailiff	NONE	Reporter
(Parties and Counsel checked if present)				
BH011621 (L.A.S.C. Case No. BA441591)				
In re, XAVIER DMITRI NAILING,		Counsel for Petitioner:		
Petitioner, On Habeas Corpus		Counsel for Respondent:		

Nature of Proceedings: REQUEST FOR INFORMAL RESPONSE (WRIT OF HABEAS CORPUS)

TO THE RESPONDENT, THE PEOPLE OF THE STATE OF CALIFORNIA:

Petitioner Xavier Dmitri Nailing is currently serving a sentence of two years in state prison for second degree robbery. Petitioner is currently serving out his sentence at Avenal State Prison.

On November 17, 2016, Petitioner pleaded guilty to second degree robbery (Pen. Code, § 211). The imposition of his sentence was suspended, and he was placed on formal probation for five years. One of the conditions of probation was that he serve 261 days in county jail. Petitioner was awarded credit for 261 days in custody consisting of 131 days actual custody and 130 days good time/work time.

On July 10, 2017, Petitioner admitted to a violation of probation. Probation was revoked and terminated, and Petitioner was sentenced to two years in state prison. Petitioner was given 226 days of custody credit, consisting of 197 actual days and 29 conduct days. It is unclear from the record why Petitioner was awarded fewer conduct credits at the time he was sentenced to state prison than at the time he was placed on probation.

On February 22, 2018, Petitioner filed the instant petition for writ of habeas corpus. Petitioner contends that he is entitled to additional presentence credits based on the fact that he was awarded 261 days of credit in 2016 when he was placed on probation, but was awarded only 226 days of credit when he received his prison sentence. In support of his contention, Petitioner cites Penal Code section 2900.5. Penal Code section 2900.5, subdivision (a), states that in "all felony and misdemeanor convictions, either by plea or by verdict, when the defendant has been in custody, including, but not limited to, any time spent in a jail, . . . all days of custody of the defendant, including days served as a condition of probation in compliance with a court order . . . shall be credited upon his or her term of imprisonment . . .".

Accordingly, Respondent is requested to file an informal response addressing the issue of whether Petitioner is entitled to additional presentence credits towards his prison sentence, for the 261 days awarded in 2016, which satisfied a condition of his probation before it was revoked and terminated. Unless otherwise ordered by this court, the informal response shall be filed within 15 days from the date of service of this order. (Cal. Rules of Court, rule 4.551(b)(1).) Petitioner will then have 15 days from the date of service of the informal response to file a reply to the response. (Cal. Rules of Court, rule 4.551(b)(2).) The matter will be deemed submitted following the filing of Petitioner's informal reply, or the 15-day period provided for filing a reply has expired. (Cal. Rules of Court, rule 4.551(b)(3).)

Exhibit B

JACKIE LACEY

District Attorney of Los Angeles County

By: BROCK LUNSFORD for EVELIS DEGARMO

Deputy District Attorney

POST-CONVICTION LITIGATION AND DISCOVERY DIVISION

320 W TEMPLE STREET RM. 540

LOS ANGELES, CA 90012

(213) 974-5914

Attorney for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES

THE PEOPLE OF THE STATE OF CALIFORNIA,  
Plaintiff,

v.

XAVIER D. NAILING, CDCR#: BD-7608

Defendants(s).

CASE NO. BA441591

SUBPOENA DUCES TECUM  
APPLICATION FOR  
SUBPOENA DUCES TECUM  
CRIMINAL

THE PEOPLE OF THE STATE OF CALIFORNIA TO (ROBIN BOCCILLA), CUSTODIAN OF RECORDS, Avenal State Prison, P.O. Box 8 Avenal, California 93204 fax no. (559) 386-2337.

You are commanded to attend a session of the Superior Court of California, County of Los Angeles, to be held at the CENTRAL DISTRICT, in Department 100, a courtroom, located at 210 W. TEMPLE ST., ROOM 13-307, LOS ANGELES, CA 90012, County of Los Angeles May 2, 2018 at 8:00 a.m., then and there to testify as a witness in this action on the part of Plaintiff and that you then and there produce the documents now in your custody or under your control, described in the copy of the application for subpoena duces tecum attached hereto which is incorporated herein by reference.

You must appear at the time unless you make a special agreement to appear another time, etc., with:  
EVELIS DEGARMO, Deputy District Attorney, at phone number (562) 247-2029.

Failure to appear on the date set forth herein or at such other time or upon such notice as may have been agreed to with the party at whose request this subpoena was issued may be punished as contempt by this court. You may also be liable for the sum of five hundred dollars and all damages to such party resulting from your failure to attend. (Penal Code Section 1331, 1331.5)

DISOBEDIENCE OF THIS SUBPOENA MAY BE PUNISHED BY A FINE, IMPRISONMENT, OR BOTH. A WARRANT MAY BE ISSUED FOR YOUR ARREST IF YOU FAIL TO APPEAR.

DATED: April 12, 2018



Respectfully Submitted,

JACKIE LACEY

District Attorney

By Brock Lunsford

for EVELIS DEGARMO

Deputy District Attorney

APPLICATION FOR SUBPOENA DUCES TECUM

STATE OF CALIFORNIA, County of Los Angeles

The undersigned states: That he/she is attorney of record for the People of the State of California in the above-titled action; that said cause was duly set down for discovery compliance on May 2, 2018 at 08:00 AM, in Department 100 of the above-entitled Court.

That Custodian of Records, ROBIN BOCCELLA has in his/her possession or under his/her control the documents attached to this subpoena duces tecum as Exhibit 1 for the following inmate:

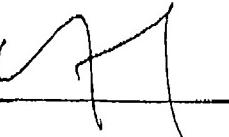
XAVIER DIMITRI NAILING, CDCR NO. BD-7608.

That the above documents are material to the issues involved in the case by reason of the following facts:

Needed to determine if the defendant poses an unreasonable risk to public safety pursuant to a resentencing provided by Penal Code section 1170.126.

Executed April 12, 2018, at LOS ANGELES, California.

I declare under penalty of perjury that the foregoing is true and correct.

  
  
\_\_\_\_\_  
Declarant

DECLARATION OF SERVICE

STATE OF CALIFORNIA, County of Los Angeles

I, the undersigned state that: I served the foregoing subpoena by showing the original and delivering a true copy thereof, together with a copy of the application in support thereof, to each of the following named persons:

I declare under penalty of perjury that the foregoing is true and correct.

Executed \_\_\_\_\_, at \_\_\_\_\_, California.

\_\_\_\_\_  
Declarant

EXHIBIT LIST People v. Xavier Nailing, Case No. BA441591

INMATE: XAVIER DIMITRI NAILING, CDCR NO. BD-7608

The complete CDC 112 Chronological History;

All the following documents from July 28, 2017 to present:

- Institution Staff Recommendations;
- Abstract of Judgment;
- Court of Appeal Opinion (published or unpublished)
- CDC 804;
- CDC 115 without accompanying 837;
- CDC 128-A;
- CDC 128-G;
- CDC 840 Classification scores;
- CDC 101, Work Report;
- CDC 114-D, except for Placement in Administration Segregation for protective custody or out to court;
- CDC 128-B related to volunteer work, support groups, self-help, general chrono related to laudatory, and any certificates earned and negative behaviors;
- CDC 128-B2; 128-E;
- CDC 812, Notice of Critical Case Information Form;
- CDC 1030;
- CDC 128-C for mental health placement

COPY

1 JACKIE LACEY, District Attorney of Los Angeles County  
2 BRIAN SCHIRN, Head Deputy, Post Conviction Litigation & Discovery  
3 JUDITH PETTIGREW, Deputy-In-Charge  
4 EVELIS M. DE GARMO, State Bar No. 186473  
Habeas Corpus Litigation Team  
5 320 W. Temple Street, Suite 540  
Los Angeles, California 90012  
Phone: (562) 247-2029  
[edegarmo@da.lacounty.gov](mailto:edegarmo@da.lacounty.gov)  
6 Attorneys for Respondent  
7

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES**

9  
10 In re XAVIER DMITRI NAILING,  
11 On Habeas Corpus,  
12  
13

Case No.: BA441591 (BH011621)

REQUEST FOR EXTENSION OF TIME TO  
FILE INFORMAL RESPONSE

14 **TO THE HONORABLE WILLIAM C. RYAN, JUDGE, DEPARTMENT 100,**  
15 **CENTRAL DISTRICT, AND TO PETITIONER, XAVIER DMITRI NAILING:**

16 The People of the State of California, real party in interest (Respondent) in the above-entitled  
17 case, by their counsel, Jackie Lacey, District Attorney of Los Angeles County, hereby request that the  
18 time for filing the informal response in this matter be extended to June 15, 2018. This request is based  
19 upon the attached Declaration of Deputy District Attorney Evelis De Garmo, the attached Points and  
Authorities, and all records of this case on file with the court.  
20

21 Dated: April 12, 2018

22 Respectfully submitted,

23 **JACKIE LACEY**  
24 District Attorney of Los Angeles County

25 By:  
26

27   
28 EVELIS DE GARMO  
Deputy District Attorney  
Habeas Corpus Litigation Team

1 JACKIE LACEY, District Attorney of Los Angeles County  
2 EVELIS DE GARMO, State Bar No. 186,473  
3 Deputy District Attorney  
4 Post-Conviction and Litigation Division  
5 Third Strike Resentencing Unit  
6 320 West Temple Street, 540  
Los Angeles, CA 90012  
562-247-2029  
Atorneys for People and Respondent

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES  
CLARA SHORTRIDGE FOLTZ CRIMINAL JUSTICE CENTER  
CRIMINAL WRITS CENTER**

PEOPLE OF THE STATE OF CALIFORNIA ) Case No. BA441591 (BH011621)  
Plaintiff and Respondent, )  
v. ) PROOF OF SERVICE FOR  
XAVIER NAILING, ) EXTENTION OF TIME  
Defendant and Petitioner. )

TO THE HONORABLE WILLIAM C. RYAN, JUDGE, CJC WRITS, SUPERIOR  
COURT OF THE STATE OF CALIFORNIA AND TO PETITIONER:

The undersigned declares under the penalty of perjury that the following is true and correct: I am over eighteen years of age, not a party to the within cause, Xavier Nailing, and I am employed in the Office of the District Attorney of Los Angeles County with offices at 320 W. Temple Street, Ste. 540, Los Angeles, California 90012. On the date of execution below, I served the attached document: Request for Extension of Time, by depositing a true copy thereof, enclosed in a sealed envelope with postage thereon fully prepaid, for

1 collection in the United States mail by the County of Los Angeles, California, addressed as  
2 follows:  
3

4 XAVIER NAILING  
5 FACILITY D  
6 P.O. BOX 904  
7 AVENAL, CA 93204

8 Executed on April 13, 2018, at Los Angeles, California.

9  
10 Jacqueline Acres  
11 Jacqueline Acres  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

DECLARATION OF EVELIS DE GARMO

1. I am an attorney-at-law licensed to practice in all courts of the State of California and am employed as a Deputy District Attorney of the Habeas Corpus Litigation Team ("HABLIT") for the Los Angeles County District Attorney's Office (LADA).

2. XAVIER DMITRI NAILING has filed a petition in the Los Angeles County Superior Court, Central District, Department 100.

3. In order to respond to the Petition for Writ of Habeas Corpus, it will be necessary to secure copies of the District Attorney's file, the Court of Appeals records and opinion(s), Court and Reporter's Transcripts, Attorney General records and any additional documentation as may become relevant to this proceeding. Petitioner has raised a Credit Error claim. The requested date allows time for Respondent to order and receive the relevant court documents.

4. I request an extension of time until June 15, 2018 to submit the informal response. If I am able to complete the informal response prior to this date, I will file the matter upon completion prior to June 15, 2018.

Executed on April 12, 2018, at Los Angeles, California.

EVELIS DE GARMO  
Deputy District Attorney  
Habeas Corpus Litigation Unit

Exhibit C

STATE OF CALIFORNIA  
Calculation Worksheet - Determinate (DSL)  
CDCR 1897-U (08/17) Access Version

## CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION

Worksheet No. \_\_\_\_ of \_\_\_\_

(use multiple worksheets for mixed credit codes)

CALCULATION WORKSHEET -- DETERMINATE (DSL)

A4 Legend - Vesting%:	A11 Legend - Earning%:	B7 Legend - Earning%:
15 = Divide by 5.66	15 = Divide by 6.66	15 = Divide by 6.66
20 = Divide by 4	20 = Divide by 5	20 WG A1/A2/B/D1/M/U = Divide by 5
33.3 = Divide by 2	33.3 = Divide by 3	33.3 WG A1/A2/B/D1/U Divide by 3
50 = Divide by 1	50 = Divide by 2	50 WG A1/A2/B/D1/U Divide by 2
		20 WG F = Divide by 2
		33.3 WG F = Divide by 3 then Multiply by 2
		50 WG F/M = Divide by 3 then Multiply by 2

## Section A - Original EPRD Calculation

Case Number(s): BA441591

This is the initial EPRD calculation that is done upon reception. Unless there is a change in work group, additional credits earned and/or credit losses, the EPRD remains throughout the term.

Credit Earning % : 20

Vested Credit %: 20

A1. Start Date	07/28/2017
A2. Plus Time Imposed	+ 2 YRS 0 MO
=	07/28/2019
A3. Minus Pre & Post Sentence Credit	- 226 PRE 17 PST
=	11/27/2018
A4. Minus Vested Credit Divide Line A3 PST Per A4 Legend Above	- 4
=	11/23/2018
A5. +Dead Time/-Merit Credit	+ 0 DT - 0 MC
=	11/23/2018

**A6. Equals Maximum Date**

If change in work group, credit loss, Reeves, MCC etc., or Carry Over stop here and proceed to Section B.

**INMATE COPY**

A7. Minus Day Before Start Date (Line A1)	-	07/27/2017
A8. Equals Days to Serve	=	484
A9. Minus Dead Time (A5)	-	0
A10. Equals Days where credit may be applied	=	484
A11. CDCR Good Conduct Credit (GCC)	=	96
Divide Line A10 Per A11 Legend (Round Down, PC2931 One-Third calculations, Round Up)		

A12. Maximum Date (Line A6)	11/23/2018
A13. - CDCR GCC (Line A11)	- 96
A14. Equals Original EPRD	= 08/19/2018

## Section B - Recalculation of EPRD (change in credit earning status, credit loss/credit restoration, etc.)

Accumulation of CDCR GCC for days previously earned and projected future credit. Record fractional amounts of credit (2 decimal pts.) apply whole amounts only;

B1. Maximum Date (Line A6)	= 11/23/2018
B2. Minus CDCR GCC Earned Section D w/fractions or Section G (Line G9)	- 0.25
B3. Plus Net Credit Loss (E1) (Leave blank if PC2931 One-Third)	+ 0
B4. Equals Current Release Date (CRD)* (PC2931 One-Third carry date to B15)	= 11/23/2018
B5. Minus Date Credit Applied Through (Section D only)	- 07/28/2017
B6. Equals Days Remaining To Serve as of date credit applied Divide Line B6 Per B7 Legend Above to Project CDCR GCC	= 483
B7. Equals Projected GCC	= 96.6
Accumulate Fractional Credit Line B2 0.25 (w/fractions)	C-Earnings / WG ►= 20-A1
+ Line B7 96.6 (w/fractions)	
B8. Equals Total CDCR GCC	= 96.85

\*The CRD is an intermediate date and may exceed the Maximum Date; however, the Adjusted EPRD cannot exceed the Maximum Date.

B9. Maximum Date (Line B1)	11/23/2018
B10. Minus Total CDCR GCC (Line B8, Drop Decimals)	- 96
B11. Plus Net Credit Loss (E1)	+
B12. Plus MCC Loss (E2)	+
B13. Plus RAC Loss (E3)	+
B14. Plus Net Credit Loss (E4)	+
B15. (B9 +/- B10 thru B14)	= 8/19/2018
B16. Minus MCC (F1)	- 28
B17. Plus MCC Loss (E5 or G10)	+
B18. Minus RAC (F2)	- 0
B19. Plus RAC Loss (E6 or G11)	+
B20. (B15 +/- B16 thru B19)	= 07/22/2018
(B9 or B20 Whichever is Earlier)	7/22/2018
B21. Minus EMC (F3)	- 0
B22. Minus ECC (F4)	- 0
B23. Equals Adjusted EPRD	= 7/22/2018

CALCULATED BY (Name & Title)	K. Bigoni, CCRA		DATE 12/28/2017
INMATE'S NAME NAILING, XAVIER	CDCR NUMBER BD7608	LOCATION ASP	

Version 4.6.1.1

## Release Note

Summary	Accommodations	Movement	Bed Inventory	ADA/EC History
---------	----------------	----------	---------------	----------------

[Generate Reports](#) / [Get Help](#) / [Report a Problem](#) Log Out

CDC # : BD7608

CDC Number: BD7608, NAILING, XAVIER DIMITRI

**Summary****Offender/Placement**

CDC #: **BD7608** [Other]  
 Name: **NAILING,  
XAVIER  
DIMITRI**  
 Institution: **Wasco State  
Prison**  
 Bed Code: **H 004  
1000143UP**  
 Placement Score: **19**  
 Custody Level:  
 Housing Pgm: **RC - Recept Ctr**  
 Housing Restrictions:  
 Physical Limitations to Job/Other:

**Disability/Assistance**

DDP Code: **NCF**  
 Effective Date: **08/01/2017**  
 DPP Codes: [History]  
 1845 Date:  
 MHSDS Code: **CCCMS**  
 SLI:  
 Primary Method:  
 Alternate Method:  
 Learning Disability:  
 TABE Score: **5.3**  
 TABE Date: **09/01/2017**  
 Durable Medical Equipment: [Info]  
 Last Accomm:  
 Spoken Languages:

**Important Dates**

Pending Revocation: **No**  
 Revocation Date:  
 Date Received in CDCR: **07/28/2017**  
 Last Return Date:  
 Extended Stay Date: **10/26/2017**  
 Extended Stay Privileges?  
 Release Date: **07/22/2018**  
 120 Day Date: **03/24/2018**  
 Next IDST Date:

**Work/Vocation/PIA**

**1**  
 Group Priv: **U**  
 Group Work: **U**  
 Start Date: **09/11/2017**  
 Status: **Voluntary**  
 Job Position: **VA2.101.005**  
 Job Title: **H VOLUNTARY -  
ABE II**  
 IWTIP Code: **K**  
 IWTIP Description:  
 Regular Day Off: **SU, S**  
 Work Hours: **0800-1600**

**Accommodation History**

No Accommodation Records Found.

Inmate Name: NAILING, XAVIER D.	CDC #: BD7608	DOB: 09/11/1969
Facility: WSP-Facility H [WSP-H] PC2933 Eligible: No	Housing: H 004 1-000143U MCC/RAC/EMC/ECC Eligible: Yes	CCRA: D. Harrison CCI: J. Actis PRCS Eligible: No
You have been committed to the CDCR to serve the following sentences.		

Sentencing Overview		
Term Start Date: 07/28/2017	Total Term: 2y 0m 0d	Overall Max Date: 11/23/2018
Control Date: 07/22/2018	Control Date Type: EPRD	As of Date: 09/25/2017
Time Served: 306 days	Time Remaining: 300 days	

Other Parole Eligibility Dates		
Non-Violent Parole Eligibility Date (NPED):		
Second Strike Parole Eligibility Date (SPED):		
Youth Offender Parole Eligibility Date (YPED):		
Elderly Parole Eligibility Date (EPED):	12/26/2041	

Sentence Structure					
Cmt.	County	Sentence Date	Total Time Imposed	Status	Status Date
DA	Los Angeles	07/10/2017	2y 0m 0d	Imposed	07/10/2017

Sentence Components (1 - 1 of 1)											
Cmp.	Count	County/Case #	Crime (Statute)	Offense	Offense Date	Time Imposed	Relationship to Cmt./Cmp.	Credit Rate	Pre-Snt Credit	Post-Snt Credit	Vested Credit
001	01	Los Angeles/ BA441591	PC212.5(c)[02]	Robbery 2nd	11/17/2015	2y 0m 0d		15%/20% Violent	226	17	4

COMMENTS: None	<i>PPS-II</i>
-------------------	---------------

Legal Mandates (1 - 1 of 1)				
Cmt./Cmp.	Mandate Type	Begin Date	Due Date	Status
DA-001	Notification Reqd - Violent Felon (PC3058.6)	07/28/2017		Required

Dead Times				
Began	Ended	Days	Type	
No Rows Found				

CDCR Credits Received/Lost (1 - 3 of 3)								
Entry Date	Effective Date	Type	Work Group	Duration (days)	Recd/Lost Days	Reason	Status	Qualifier
09/25/2017	09/22/2017	Milestone Completion Credit (MCC)			28	School	Applied	Course # M010B07
08/03/2017	08/03/2017	Work Group Change (done by Cls.)	U - Unclassified	53		Classification Action	Applied	
08/03/2017	07/28/2017	Work Group Change (done by Cls.)	D1 - Administrative Segregation	6		Classification Action	Applied	

Financial Obligations (1 - 2 of 2)					
Commitment	Court	Case Number	Account Type	Amount Ordered	
DA	Los Angeles Co Superior Court-Los Angeles(Central)	BA441591	Restitution Fine (PC 1202.4)	\$350.00	
DA	Los Angeles Co Superior Court-Los Angeles(Central)	BA441591	Restitution Fine (PC 1202.45)	\$350.00	

Active Detainers/Notifications						
Date Placed	Type	Reason	Agency Name	Detainer/Case #	Offense	
No Rows Found						

Legend: (The dates shown above are subject to change.)

Exhibit C

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES**  
**DEPT 100**

Date:	May 01, 2018	Judge	S. KADOHATA	Deputy Clerk
Honorable:	WILLIAM C. RYAN NONE	Bailiff	NONE	Reporter
(Parties and Counsel checked if present)				
BH011621 (L.A.S.C. Case No. BA441591)				
In re, XAVIER DMITRI NAILING,		Counsel for Petitioner:		
Petitioner,		Counsel for Respondent:		
On Habeas Corpus				

Nature of Proceedings: ORDER RE: OBJECTION TO REQUEST FOR EXTENSION OF TIME

**IN CHAMBERS**

Objection to Respondent's request for extension of time by Petitioner Xavier Dmitri Nailing, *pro se*. Respondent, the People of the State of California ("People"), represented by Deputy District Attorney Evelis De Garmo. Denied.

**BACKGROUND**

On November 17, 2016, Petitioner pleaded guilty to second degree robbery (Pen. Code, § 211). The imposition of his sentence was suspended, and he was placed on formal probation for five years. One of the conditions of probation was that he serve 261 days in county jail. Petitioner was awarded credit for 261 days in custody consisting of 131 days actual custody and 130 days good time/work time.

On July 10, 2017, Petitioner admitted to a violation of probation. Probation was revoked and terminated, and Petitioner was sentenced to two years in state prison. Petitioner was given 226 days of custody credit, consisting of 197 actual days and 29 conduct days. It is unclear from the record why Petitioner was awarded fewer conduct credits at the time he was sentenced to state prison than at the time he was placed on probation.

On February 22, 2018, Petitioner filed a petition for writ of habeas corpus with this court, contending that he is entitled to additional presentence credits based on the fact that he was awarded 261 days of credit in 2016 when he was placed on probation, but was awarded only 226 days of credit when he received his prison sentence. On April 4, 2018, this court requested an informal response from Respondent addressing the issue of whether Petitioner is entitled to additional presentence credits towards his prison sentence. On April 13, 2018, Respondent requested an extension of time to file the informal response, citing the need to examine various transcripts and records, including some in the possession of the Court of Appeal and the Office of the Attorney General. On April 16, 2018, this court granted the extension of time to file the informal response up to and including June 15, 2018.

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES****DEPT 100**

Date:	May 01, 2018	Judge	S. KADOHATA	Deputy Clerk
Honorable:	WILLIAM C. RYAN NONE	Bailiff	NONE	Reporter
(Parties and Counsel checked if present)				
BH011621 (L.A.S.C. Case No. BA441591)				
In re, XAVIER DMITRI NAILING,		Counsel for Petitioner:		
Petitioner, On Habeas Corpus		Counsel for Respondent:		

On April 23, 2018, Petitioner filed a “notice motion in amicus curiae” explaining that he received a copy of a subpoena duces tecum, and requesting an amended abstract of judgment reflecting a total of 332 days of presentence credits and 17 days of postsentence credits. On April 24, 2018, Petitioner filed an objection to Respondent’s request for an extension of time to file the informal response, alleging that he will be falsely imprisoned if he remains in custody beyond April 20, 2018. The court considers both the objection and the motion in this order, as they both concern Petitioner’s pending petition for writ of habeas corpus.

**DISCUSSION****Motion in Amicus Curiae**

Petitioner states in his “motion in amicus curiae,” that he is in receipt of a subpoena duces tecum for Robin Boccella and for records in possession of the California Department of Corrections and Rehabilitation (“CDCR”), for May 2, 2018, in Dept. 100. Petitioner alleges that the subpoena states that the documents are “needed to determine if the defendant poses an unreasonable risk to public safety pursuant to a resentencing provided by Penal Code sect. 1170.126.” Petitioner alleges that the subpoena duces tecum is signed by Deputy District Attorney Brock Lunsford and that the requested items are needed for resentencing under Penal Code section 1170.126 (“Proposition 36”).

Petitioner has not petitioned for resentencing pursuant to Proposition 36. Petitioner asserts, correctly, that he is not serving an indeterminate life term and therefore is not eligible for resentencing pursuant to Proposition 36. Petitioner states: “It is unclear of the true intention of Brock Lunsford and Evelis De Garmo.” (*Sic.*) Although the court recently received documents from the CDCR in response to a subpoena duces tecum issued by Deputy District Attorney Brock Lunsford on behalf of Deputy District Attorney Evelis De Garmo, no mention is made of Proposition 36. Petitioner has not included a copy of the subpoena he allegedly received.

Petitioner’s request for an amended abstract of judgment to correct presentence credits is successive, as his pending habeas petition concerns the calculation of his presentence credits. (*In re Clark* (1993) 5 Cal.4th 750, 770, superseded by Proposition 66 on other grounds as stated in *Briggs v. Brown* (2017) 3 Cal.5th 808,

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES**  
**DEPT 100**

Date:	May 01, 2018	Judge	S. KADOHATA	Deputy Clerk
Honorable:	WILLIAM C. RYAN NONE	Bailiff	NONE	Reporter
(Parties and Counsel checked if present)				
BH011621 (L.A.S.C. Case No. BA441591)				
In re, XAVIER DMITRI NAILING,		Counsel for Petitioner:		
Petitioner,		Counsel for Respondent:		
On Habeas Corpus				

quoting *In re Horowitz* (1949) 33 Cal.2d 534, 546–547 [“petitioner cannot be allowed to present his reasons against the validity of the judgment against him piecemeal by successive proceedings for the same general purpose”].) Successive petitions waste scarce judicial resources, requiring the court to repeatedly review the record in order to assess the merits of the petitioner’s claims. (*Ibid.*) Petitioner fails to justify the reason for his successive petition. (*In re Reno* (2012) 55 Cal.4th 428, 455; *In re Clark*, *supra*, at p. 798, fn. 35.)

Objection to Extension of Time

Petitioner objects to Respondent’s request for an extension of time to file the informal response. He asserts that he will be over-detained and subjected to false imprisonment if the extension is granted. Petitioner contends that as of April 20, 2018, he is being over-detained.

Petitioner contends that he is entitled to 332 days of presentence credits. Petitioner was sentenced to two years in state prison on July 10, 2017. Even if Petitioner had been awarded 332 days of presentence credits, it is not clear that he would be over-detained as of June 15, 2018 (the day the informal response is currently due), much less as of April 20, 2018.

The court has requested an informal response on the issue of Petitioner’s presentence credits. Respondent has a right to respond to the court’s request. In order to respond to the court’s request, Respondent requires documents not currently in their possession. An extension of time is required in this case in order to allow Respondent the time necessary to gather the documents needed to comply with the court’s request for an informal response.

The informal response is currently due on June 15, 2018. The court understands Petitioner’s desire to resolve this matter as quickly as possible, and will entertain no further requests for extension of time to file the informal response.

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES**  
**DEPT 100**

Date:	May 01, 2018	Judge	S. KADOHATA	Deputy Clerk
Honorable:	WILLIAM C. RYAN NONE	Bailiff	NONE	Reporter
(Parties and Counsel checked if present)				
BH011621 (L.A.S.C. Case No. BA441591)				
In re, XAVIER DMITRI NAILING,		Counsel for Petitioner:		
Petitioner, On Habeas Corpus		Counsel for Respondent:		

**DISPOSITION**

For all of the foregoing reasons, the objection to the request for extension of time and the “motion in amicus curiae” are DENIED.

The Clerk is ordered to serve a copy of this order upon Petitioner, and upon Deputy District Attorney Evelis De Garmo, as counsel for Respondent, the People of the State of California.

The court order is signed and filed this date.

A true copy of this minute order is sent via U.S. Mail to the following parties:

Petitioner

Xavier Dmitri Nailing, #BD7608  
Facility D  
P.O. Box 904  
Avenal, CA 93204

Respondent's Counsel

Office of the District Attorney  
Post-Conviction Litigation & Discovery Division  
Habeas Corpus Litigation Team  
320 W. Temple St., Rm. 540  
Los Angeles, CA 90012  
Attn: Evelis De Garmo, Deputy District Attorney



THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED IS A FULL, TRUE  
AND CORRECT COPY OF THE ORIGINAL ON FILE AND IN MY POSSESSION IN MY OFFICE.  
SHERRI R. CARTER, EXECUTIVE OFFICER/CLERK OF THE SUPERIOR COURT OF  
THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES.

Attested: MAY 03 2018 BY: G. ALONZO DEPUTY

Xavier Nailng Bonos  
410 -2-2 up  
P.O. Box 904  
AVENAL, CA. 93204

California Department  
Corrections and Rehabilitation

DEPT OF CORR AND REHAB  
345a  
\$ C  
C 5/  
Mailed  
US |



75¢  
newpost

\$ C  
C 5/  
Mailed  
US |

LEGAL MAIL

MAY 17 2013  
AVENAL STATE PRISON  
MAILROOM



Legal  
Mail

UNITED STATES DISTRICT COURT  
OFFICE OF THE CLERK  
U.S. COURT HOUSE, ROOM 68  
LOS ANGELES, CA 90012

LEGAL MATERIAL



T.M.D. 8

5-16-18